

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

: Case No. 3:05cr162  
and 3:11cv192

vs.

GARY LYNN SMITH,

JUDGE WALTER HERBERT RICE

Defendant.

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DECISION AND ENTRY ADOPTING INITIAL (DOC. #90) AND SUPPLEMENTAL (DOC. #93) REPORTS AND RECOMMENDATIONS; DEFENDANT'S OBJECTIONS TO SAID JUDICIAL FILINGS (DOC. #92 AND #94) OVERRULED; DEFENDANT'S MOTION TO RECHARACTERIZE HIS FILINGS AS A MOTION TO VACATE UNDER SECTION 2255 (DOC. #88) GRANTED; DEFENDANT'S MOTION FOR THIS COURT TO SHOW HOW IT HAS SUBJECT MATTER JURISDICTION OF A MOTION TO VACATE UNDER SECTION 2255 GRANTED; DEFENDANT'S MOTION FOR AN ORDER TO SHOW CAUSE (DOC. #80), MOTION TO STRIKE GOVERNMENT'S RESPONSE (DOC. #83) AND MOTION TO COMPEL THE COURT TO ANSWER THE SHOW CAUSE MOTION (DOC. #84) DENIED AS MOOT; AND DEFENDANT'S ORIGINAL MOTION FOR JUDICIAL NOTICE TO DISMISS FOR LACK OF CRIMINAL JURISDICTION (DOC. #79), CONSTRUED AT DEFENDANT'S REQUEST AS A MOTION TO VACATE UNDER 28 U.S.C. § 2255, DENIED WITH PREJUDICE; CERTIFICATE OF APPEALABILITY AND ANTICIPATED MOTION TO APPEAL *IN FORMA PAUPERIS* DENIED; JUDGMENT TO ENTER ACCORDINGLY; TERMINATION ENTRY

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Pursuant to the reasoning and citations of authority set forth by the United

States Magistrate Judge in his Initial (Doc. #90) and Supplemental (Doc. #93) Reports and Recommendations, as well as a thorough *de novo* review of this Court's file and the applicable law, said Reports and Recommendations are adopted in their entirety. The Defendant's Objections to said judicial filing (Doc. #92 and #94) are overruled.

Accordingly, Defendant's motion to recharacterize his filings as a Motion to Vacate under 28 U.S.C. § 2255 (Doc. #88) is sustained; Defendant's Motion for this Court to Show Cause how it has subject matter jurisdiction of a Motion to Vacate under § 2255 is sustained, the Court concluding that it has subject matter jurisdiction over the captioned cause; Defendant's Motion for an Order to Show Cause (Doc. #80), Motion to Strike the Government's Response (Doc. #83), and Motion to Compel the Court to answer the Show Cause Motion (Doc. #84) are denied as moot.

Judgment is to enter in favor of Plaintiff and against Defendant herein, concluding that Defendant's original Motion for Judicial Notice to dismiss for lack of criminal jurisdiction (Doc. #79), construed at Defendant's request as a Motion to Vacate under 28 U.S.C. § 2255, is denied with prejudice due to the bar of the applicable statute of limitations.

Given that Defendant has not made a substantial showing of the denial of a constitutional right and that, moreover, that jurists of reason would not disagree with the opinion rendered herein, Defendant is denied a certificate of appealability.

Moreover, given that any appeal from this Court's decision rendered herein would be objectively frivolous, the Defendant is denied leave to appeal *in forma pauperis*.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

October 25, 2011

*Walter Herbert Rice*

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WALTER HERBERT RICE  
UNITED STATES DISTRICT JUDGE

Copies to:

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